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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,513	03/10/2004	Brian S. Higgins	1340-012	4226
4678	7590	10/18/2005	EXAMINER	
MACCORD MASON PLLC 300 N. GREENE STREET, SUITE 1600 P. O. BOX 2974 GREENSBORO, NC 27402			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/797,513	HIGGINS, BRIAN S.
	Examiner Josiah Cocks	Art Unit 3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 March 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. The examiner notes that applicant's method claims recite such steps of staging techniques for the fuel including the use of NOx burners, and providing over-fire air. Further, claims 9-16 appear to apparatus claims that would necessitate a drawing to illustrate the apparatus. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

## **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-16 are dependent upon apparatus claim 9, which recites a combustion furnace that is operated with a recited method. However, these claims 10-16 refer only to the method of claim 9 and not the furnace itself. It is therefore unclear if applicant intended these claims to be regarded as apparatus or method claims. As best can be determined, and for the purpose of an examination on the merits, these claims have been regarded as reciting --the combustion furnace of claim.....-. Correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,824,441 to Kindig (“Kindig”).

Kindig discloses a method in the same field of endeavor as applicant’s invention and as described in applicant’s claims 1-32. In particular, Kindig describes a method of reducing the acidity of flue gas (e.g. NOx and SO<sub>3</sub>, see abstract); partially combustion the fuel in a first state to create a reducing environment (see at least col. 10, lines 51-54); maintaining the reducing environment for a sufficient time period such that reducible acids are reduced to achieve a desirable acidity concentration in the flue gas (see at least col. 12, line 54 through col. 13, line 23, note particularly equation 7); combusting the remainder of the fuel and combustion intermediates in a second stage with oxidizing environment in order to decrease the acidity of the flue gas by reducing the acid concentration of the gas (see at least col. 10, lines 43-47).

Kindig also discloses micro-staging the first stage fuel combustion where the micro-staging is provided through the use of low NOx burners (see col. 12, lines 40-44), macro-staging the first stage of fuel combustion where the macro-staging is provided through the use of over-fired air (see col. 10, lines 43-46), combinations of the two staging techniques, and the fuel is coal (see col. 1, line 16).

In regard to claims 9-16, Kindig clearly disclose that the method described is employed in a combustion furnace (see col. 6, lines 23-40).

***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-8 and 17-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/797,272. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the claims of this application are broader in scope but claiming the same invention as that of Application No. 10/797,272.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

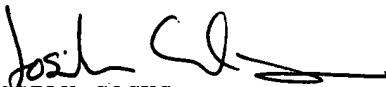
*Conclusion*

8. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 4,381,718 (Carver et al.), 5,809,910 (Svendssen), 6,109,911 (Tamminen et al.), and 6,280,695 (Lissianski et al.), and foreign patent documents WO 87/03507, and EPO 0 287 224 are cited to further show the state of the art concerning methods and apparatus for reducing pollutants the flue gas of furnaces.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
October 13, 2005



JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749